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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. CLARENCE RAY BEAUFORD, Defendant and Appellant.	2d Crim. No. B196860 (Super. Ct. No. BA291403) (Los Angeles County)

Clarence Ray Beauford appeals from the judgment following his conviction of resisting a police officer (Pen. Code, § 69);[1] possession of a firearm by a felon (§ 12021, subd. (a)(1)); vandalism (§ 594, subd. (a)); and three counts of making criminal threats. Appellant challenges the sufficiency of the evidence to support his criminal threat convictions and asks this court for an independent review of the trial court's in camera hearing on his motion for discovery. (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531.) We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Rollin 30's Harlem Crips (Rollin 30's) is part of the Harlem Crips, a gang with at least 700 members. The gang's main criminal activities are residential

[1] All statutory references are to this code unless otherwise stated.

burglaries, street robberies and narcotics sales. Appellant and Rodney Stevens belong to the Rollin 30's. Appellant has Harlem Crips and Rollin 30's tattoos on his face, chest, back and arms.

The Rolling 30's claims the area directly across the street from the Los Angeles Police Department Southwest Division station. In October 2005, that division's gang unit included Sergeant Robin Brown, Officers Joseph Meyer, Paul Funicello, Alfredo Ibanez, Pierre Olega, David Dilkes, and Anthony Ariaz.

On October 5, 2005, in the early evening, Meyer and Funicello detained Rodney Stevens and two other people at a restaurant. Meyers saw appellant there, approached him, and noticed the Rollin 30's tattoos on his face. On the same night, after 11:00 p.m., Meyer and Funicello were driving northbound on Saint Andrews in a marked police car. Appellant and Stevens were walking on Saint Andrews and they stepped in front of a car, which forced it to stop. As soon as the officers parked and left their car, appellant ran northbound on Saint Andrews and Stevens ran in the opposite direction. Funicello ran after appellant. Meyer followed them in the police car.

Appellant turned east on 39th Street, and ran down the driveway of 1650 39th Street. Funicello followed and reached appellant as he tried to climb over a fence. Funicello grabbed and pulled appellant down, causing them both to fall backward, to the ground. For about 15 seconds, until Meyer arrived, Funicello struggled with appellant, who resisted violently. As the two officers tried to detain him, appellant threw back his arms, reared his head, head-butted Funicello, stood up, and removed a semiautomatic handgun from his pocket. Funicello grabbed his hands, yelled that there was a gun, and swept appellant's legs. The gun dropped. Funicello and appellant fell on the gun and continued struggling. Funicello and Meyer managed to get appellant to the ground as several other officers arrived to place him in custody.

The officers handcuffed appellant, escorted him to the street, and called an ambulance because he had a head injury. Appellant was irate and uncooperative while awaiting the ambulance. When Officer Ibanez tried to put him in a police car, appellant

approached him, and said, "I'll make your life miserable because I'm infected with H.I.V.," while spitting at him. Ibanez moved appellant toward the back of the car and closed the door. Appellant started kicking the car's right rear window and passenger door. After appellant damaged the door frame, the officers moved him to another car and restrained his legs with an ankle belt. Appellant continued spitting at officers in his vicinity. When the fire department ambulance arrived, a paramedic masked appellant to prevent his spitting.

Sergeant Brown and Officers Ibanez and Olega rode with appellant in the ambulance. While en route, appellant looked at Brown's name tag, addressed him as Brown, and as a "white motherfucker," and said, "I know what time you get off work. I'm going to smoke your ass." Appellant also said that it was "on Harlem Crips," that he would have one of his "homies smoke [Brown's] ass," and that he would "smoke [him] with his 40 cal[iber]."

Appellant turned to Ibanez and said, "Do you know what I am? I'll smoke your ass. Don't you think my Homies and I can find out where you and your family live? I'll cut your kids' ears off and then I'll shoot you with my 40 cal[iber], and that's on Harlem Crips, cuz."

Olega tried to calm appellant down in the ambulance. He said, "Calm down. . . . Whatever beef you have with us, that's aside. These guys are here to help you. Go ahead and give them your information, your medical history, any allergies, that type of thing, and he's here to help you out. That part of the investigation is over. Now we're trying to get you some medical attention." Appellant answered, "Shut [your] yellow bitch ass up, cuz. I'll blast you with my 40 cal[iber]. I ain't afraid of none of you bitches. That's on Harlem, cuz." Appellant also said that if the police helicopter had not arrived that they would all have been wearing black bands around their badges. Ibanez and Olega understood that appellant meant that he would have killed Funicello but for the helicopter's arrival.

After the ambulance reached the hospital, appellant continued yelling, swearing, screaming, and threatening people for 10 or 15 minutes. Ibanez, Dilkes, Olega, Ariaz and Brown remained with appellant while he was treated. His head injury required several staples. Appellant also threatened to shoot Dilkes and Ariaz.

Although Brown had received many threats during his 18-year career, he had reported just two, including appellant's threat. Because he considered appellant's threat to be serious, Brown took many precautions. He checked out and carried a hand-held radio with him constantly; notified local police and requested periodic checks of his residence; and informed his wife of the threats and his concern for their family's safety. Like Brown, Ibanez took appellant's threats seriously. He changed his route to and from work. He also notified his wife, neighbors, babysitter and personnel at his children's schools of the potential danger. Olega also took appellant's threat seriously. He had never reported a serious threat upon his life until appellant threatened him. Olega knew that appellant was a committed gang member and he feared that other gang members would carry out appellant's threats. As a precaution, the police department transferred Olega to another division far from the Southwest Division for about one month after appellant's arrest.

Appellant also threatened other officers who viewed his threats seriously. At least one of those officers (Ariaz) had known officers who had been threatened and killed by gang members.

DISCUSSION

Substantial Evidence Supports the Criminal Threat Convictions

Appellant challenges the sufficiency of the evidence to support his criminal threat convictions. In reviewing an insufficient evidence claim, we consider the entire record in the light most favorable to the judgment to determine whether it discloses substantial evidence such that a reasonable jury could find the defendant guilty beyond a reasonable doubt. (*People v. Elliot* (2005) 37 Cal.4th 453, 466.) We presume the existence of every fact supporting the judgment that the jury reasonably could have

deduced from the evidence, and a judgment will be reversed only if there is no substantial evidence to support the verdict under any hypothesis. (*People v. Crittenden* (1994) 9 Cal.4th 83, 139; *People v. Sanghera* (2006) 139 Cal. App.4th 1567, 1573.) Here, we conclude that sufficient evidence supports appellant's criminal threat convictions.

Section 422 makes it a crime to "willfully threaten[] to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement . . . is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety . . . ." (See also *People v. Toledo* (2001) 26 Cal.4th 221, 227-228.)

In challenging the sufficiency of the evidence to support the threat offenses involving Brown, Ibanez and Olega, appellant argues that the officers were not in sustained fear. The record indicates otherwise. A "sustained" fear within the meaning of section 422 lasts for "a period of time that extends beyond what is momentary, fleeting, or transitory." (*People v. Allen* (1995) 33 Cal.App.4th 1149, 1156 [15 minutes of fear is "more than sufficient to constitute 'sustained' fear for purposes of . . . section 422"].) The fact that the victims of the challenged threat offenses took considerable and inconvenient precautions as a result of appellant's threats establishes that they were in sustained fear. Their precautions included changing commuting routes (Ibanez); getting transferred to another location for a month (Olega); keeping a hand-held radio constantly available (Brown); and notifying family members of the threats (Brown and Ibanez).

Appellant also claims that his words were mere rants and raves that were not accompanied by any physical violence. Given the context and content of appellant's statements, it is hard to conceive of any juror who would consider appellants words to be mere rants and raves. Just before uttering the threats, appellant had violently resisted and

head-butted an officer; pulled out a semiautomatic handgun during a detention; and kicked police vehicle door aggressively enough to damage its frame. He also spit at Ibanez while threatening to "make his life miserable because [he was] infected with H.I.V." Appellant continued spitting at those around him until a mask prevented his doing so. A juror could reasonably conclude that such conduct was physically violent and threatening.

In each case, appellant spoke directly to the victim while he threatened to smoke, shoot or kill him, and expressly or impliedly indicated that his fellow gang members would carry out the threat if appellant did not personally do so. For example, he looked at Brown's name tag, addressed him by name and said, "I know what time you get off work. I'm going to smoke your ass." Appellant also told him that it was "on Harlem Crips," that he would have one of his "homies smoke [Brown's] ass," and that he would "smoke [him] with his 40 cal[iber]." Appellant's gang's territory was directly across the street from the victims' station, which enhanced the gang's ability to pursue the victims. Substantial evidence supports the challenged threat convictions.

Pitchess Motion

Appellant requests our independent review of the in camera proceeding involving his motion to disclose police officer personnel records. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1229.) "Allowing an accused the right to discover is based on the fundamental proposition that he is entitled to a fair trial and an intelligent defense in light of all relevant and reasonably accessible information. [Citations.]" (*Pitchess v. Superior Court*, *supra*, 11 Cal.3d at p. 535.) "Trial courts are granted wide discretion when ruling on motions to discover police officer personnel records." (*People v. Samayoa* (1997) 15 Cal.4th 795, 827.) They must state reasons for denying discovery in an in camera proceeding to permit appellate review. (*People v. Mooc*, *supra*, 26 Cal.4th at p. 1229.) The trial court must permit discovery about complaints against police officers that are relevant to the allegations in the *Pitchess* motion. But it abuses its discretion where it permits discovery of information that is not relevant. (*Id*. at p. 1232.)

We have independently reviewed the record of the in camera proceeding. The court disclosed complaints that were relevant to the allegations in appellant's *Pitchess* motion. We conclude that the trial court did not abuse its discretion by not releasing the remaining personnel records.

The judgment is affirmed.

NOT TO BE PUBLISHED.

COFFEE, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Peter Espinoza, Judge

Superior Court County of Los Angeles

Marta I. Stanton, under appointment by the Court of Appeal, for Defendant and Appellant.

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